

In the Matter of Mario Gray, Trenton

CSC Docket No. 2010-2459

(Civil Service Commission, decided July 13, 2011)

Mario Gray, a Senior Public Safety Telecommunicator with Trenton, appeals the denial of military leave with pay.

By way of background, the appellant was permanently appointed as a Laborer Heavy with the appointing authority, effective June 23, 1993. On January 12, 1998, he was permanently appointed as a Public Safety Telecommunicator Trainee, and on January 12, 1999, he was permanently appointed as a Public Safety Telecommunicator. Effective June 15, 2009, the appellant was provisionally appointed, pending promotional examination procedures, to the title of Senior Public Safety Telecommunicator. This appointment became permanent on March 18, 2010. The appellant is also a member of the New Jersey Air National Guard. On or about October 27, 2009, the appellant received military orders, instructing him to report to Goodfellow Air Force Base in Texas for “School Military Status” duty pursuant to 32 U.S.C. §503, Air Force Handbook (AFH) 10-416, and Air National Guard Instruction (ANGI) 36-2001. This deployment was to commence on February 19, 2010 and end on August 7, 2010. His orders indicate that the appellant was scheduled to attend a course entitled “Operations Intelligence Apprentice” during this time period. The appellant requested 90 days of paid military leave in order to fulfill this obligation. On January 21, 2010, the Police Director denied his request, stating that employees who *volunteer* for military assignments are not eligible for paid military leave. This decision was confirmed by the appointing authority by memorandum dated February 5, 2010. The record reflects that the appellant utilized his earned paid vacation leave from February 19 through March 31, 2010, and he was out of work on an unpaid military leave from April 1 until October 1, 2010.

On appeal, the appellant contends that he is entitled to 90 days of paid military leave each year. He also complains that he was advised that he could not utilize his “personal days” in order to remain in pay status for part of his military leave because he had not yet earned the leave time in 2010. The appellant also accuses Steven Ponella, the Personnel Officer, of bias against those in the military, alleging that Ponella once commented that “while [the appellant] was away in the Middle East helping the United States, [he] was not doing anything to help [Ponella] here.” Finally, the appellant asserts that he was previously deployed from April 2008 through October 2008, and he was forced to use two months of vacation leave in order to remain in pay status for a part of this time period. He questions whether he is able to challenge this determination as well.

In response, the appointing authority maintains that the appellant's 2010 military leave was voluntary and, thus, without pay. It contends that while the appellant's "training was necessary for the maintenance of his career field, it was not mandatory for his service to the military."

CONCLUSION

N.J.A.C. 4A:6-1.11(b) provides that permanent employees who are members of New Jersey's Organized Militia, including the National Guard, shall be entitled to a leave of absence with pay not to exceed 90 work days in the aggregate in any one calendar year for any period of federal active duty, and unlimited paid leave in the case of State active duty. This regulation further provides that active duty shall not include inactive duty for training such as weekend drills, and it defers to the New Jersey Department of Military and Veterans Affairs (DMAVA) to define federal and State active duty. *N.J.A.C.* 5A:2-2.1(a)1, one of the regulations promulgated by DMAVA, provides that:

A permanent or full-time temporary officer or employee of the State or of a board, commission, authority or other instrumentality of the State or of a county school district or municipality who is a member of the organized militia shall be entitled, in addition to pay received, if any, as a member of the organized militia, to leave of absence from his or her respective duties without loss of pay or time on all days during which he or she shall be engaged in any period of State or Federal active duty provided, however, that the leaves of absence for Federal active duty or active duty for training shall not exceed 90 work days in the aggregate in any one calendar year.

N.J.A.C. 5A:2-2.1(b) provides that leaves of absence with pay are not authorized for Inactive Duty Training, including weekend drills. *See also, N.J.S.A.* 38A:4-4.

In the instant matter, according to the appellant's military orders, he was scheduled for "School Military Status" duty pursuant to 32 *U.S.C.* §503, Air Force Handbook (AFH) 10-416, and Air National Guard Instruction (ANGI) 36-2001, from February 19 through August 7, 2010. According to ANGI 36-2001, Active Duty for Training (ADT) is defined as "[a] category of active duty used to provide structured individual and/or unit training, or education courses to reserve component members. ADT is always performed in Title 10 (Federal) status." Full-Time National Guard Duty (FTNGD) is defined as "[t]raining or other duty performed by a member of the Air National Guard of the United States under Title 32 *U.S.C.* Secs. 316, 502, 503, 504, or 505. FTNGD does not include inactive duty [for training] (IDT)." It is further noted that FTNGD is described as the "Title 32 equivalent of active duty." Based on this definition, the appellant's military orders clearly placed him in FTNGD for the period of his military leave. By definition

contained in ANGI 36-2001, FTNGD is *not* IDT. Rather, it is the equivalent of ADT. Further, as noted above, the provisions of *N.J.A.C.* 4A:6-1.11(b) and 5A:2-2.1 make no distinction between voluntary and involuntary ADT for purposes of compensation. The governing statutes and regulations simply provide for paid military leave for a period not to exceed 90 working days for periods of ADT. Therefore, the appellant should have received 90 working days of paid military leave during the period of his ADT from February 19 through August 7, 2010. Thus, he should be compensated and his record should be adjusted accordingly.

It is noted that the appellant should also be offered the opportunity to apply his earned vacation leave to any balance of his military leave that exceeded 90 working days. He should be credited with any remaining vacation leave days, provided that they were earned in 2010. In this regard, *N.J.S.A.* 11A:6-3(e) provides that vacation days not taken in a given year shall accumulate and be granted during the next succeeding year only. Thus, since the accumulation of vacation leave is statutory, it cannot be relaxed by the Civil Service Commission (Commission). Finally, the Commission notes that any issues concerning the appellant's military leave in 2008 is untimely. *N.J.A.C.* 4A:2-1.1(b) provides that an appeal must be filed within 20 days after either the appellant has notice or reasonably should have known of the decision, situation or action being appealed. The appellant clearly was aware that he had been denied military leave with pay in 2008, and no appeal was filed until almost two years later. In any event, even if the appellant's challenge to the 2008 decision was timely, he has not supplied the Commission with any specific information upon which it could base a determination.

ORDER

Therefore, it is ordered that this appeal be granted in part.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.